

**A SUBSTITUTE RESOLUTION BY
COMMUNITY DEVELOPMENT/
HUMAN RESOURCES COMMITTEE**

09-R-1017

AUTHORIZING THE MAYOR, ON BEHALF OF THE CITY OF ATLANTA, TO ENTER INTO AN OPERATING AGREEMENT WITH THE PIEDMONT PARK CONSERVANCY FOR MANGAGEMENT AND OPERATION OF THE PIEDMONT PARK GREYSTONE FACILITY; AND FOR OTHER PURPOSES.

WHEREAS, the Piedmont Park Conservancy ("PPC") is a 501(c)(3) non-profit organization dedicated to the preservation and restoration of Piedmont Park ("Park") located in Atlanta, Georgia; and

WHEREAS, part of the PPC's mission is to support the City of Atlanta ("City") in developing, enhancing, rehabilitating, and maintaining the Park so that it remains a cultural and recreational resource in the City; and

WHEREAS, the City entered into a Memorandum of Understanding ("MOU") with PPC regarding park operation, maintenance, and improvement, pursuant to Ordinance 06-O-0287 adopted by Council on February 20, 2006 and approved by the Mayor on February 28, 2006; and

WHEREAS, in 2007, pursuant to its MOU with the City, PPC performed over five million dollars worth of repairs, and preservation and restoration services on the Piedmont Park Pool and the two-story adjacent building, the bottom level of which is referred to as the Bathhouse, and the upper level of which is referred to herein as "Greystone"; and

WHEREAS, PPC has already entered into an agreement with the City whereby PPC operates and manages the Piedmont Park Pool and Bathhouse; and

WHEREAS, PPC now wishes to operate and manage Greystone pursuant to the conditions set forth in the Agreement authorized by this resolution; and

WHEREAS, it is in the best interest of the City to enter the agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA, as follows:

Section 1: That the Mayor, on behalf of the City of Atlanta, be and is hereby authorized to enter into an agreement with the Piedmont Park Conservancy, authorizing PPC to operate, manage, maintain and improve the Piedmont Park Greystone Facility ("Agreement"). The Agreement shall establish that in lieu of making rental payments, PPC shall pay the full and complete costs and expense of managing and operating

Greystone, except where otherwise indicated within the Agreement. The Agreement will be substantially similar to the agreement attached hereto as Exhibit A.

Section 2: That the terms of the Agreement shall be for a period of Five (5) years from the date the Agreement is executed, with an option to renew for two (2) additional five (5) year terms, upon mutual agreement between the parties.

Section 3: That the City and PPC entered into a Memorandum of Understanding ("MOU") in 2006, pursuant to Ordinance 06-O-0287. The Agreement does not impact nor supersede the MOU. The MOU remains in full force and effect throughout the term (and any renewal term) provided therein.

Section 4: The City Attorney or their designee is hereby directed to prepare said Agreement for execution by the Mayor, to be approved as to form by the City Attorney or their designee.

Section 5: The Agreement shall not become binding on the City, and the City shall incur no liability upon the same until such Agreement has been executed by the Mayor and delivered to the Piedmont Park Conservancy.

City of Atlanta
Department of Parks, Recreation and Cultural Affairs

LEASE AGREEMENT
with
PIEDMONT PARK CONSERVANCY, INC.
For
The Greystone Building

GEORGIA FULTON COUNTY

THIS LEASE AGREEMENT (the "Agreement") is entered into this ____ day of _____ by and between the City of Atlanta, a municipal corporation of the State of Georgia, hereinafter referred to as the "**City**" and the Piedmont Park Conservancy, Inc., a Georgia corporation and nonprofit charity under Section 501(c)(3) of the Internal Revenue Code, hereinafter referred to as the "**Conservancy**" (collectively the "**Parties**").

W I T N E S S E T H T H A T :

WHEREAS, the Conservancy is a charitable non-profit organization dedicated to enhancing and preserving Piedmont Park in Atlanta, Georgia (the "Park") as a vital urban green space and as a cultural and recreational resource that enhances the quality of life for residents and guests of the City; and; and

WHEREAS, the City and the Conservancy have created a cooperative collaboration with each other for the purpose of preserving, restoring, developing, enhancing, rehabilitating, and maintaining the Park. Most recently, the details, terms and conditions of the relationship are set forth in a Memorandum of Understanding dated May 18, 2006 (the "**MOU**"). This Agreement does not supersede the MOU, and the MOU remains in full force and effect throughout the term provided therein; and

WHEREAS, in 2007, pursuant to the MOU, the Conservancy performed over five million dollars worth of repairs, and preservation and restoration services on the Piedmont Park Pool and the two-story adjacent building, the bottom level of which is referred to as the Bathhouse, and the upper level of which is referred to herein as "**Greystone**"; and

WHEREAS, the Conservancy wishes to operate and manage Greystone at no cost to the City pursuant to the conditions set forth in the Agreement; and

WHEREAS, the execution of this Agreement on the part of the City has been authorized by ordinance (No. 09-O-----) of the Council of the City of Atlanta adopted on ----, 2009, and approved by the Mayor on -----, 2009, in the form and manner of that copy attached hereto as Appendix A and made a part hereof by reference.

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE MUTUAL TERMS AND CONDITIONS hereinbelow set forth, the Parties hereto do hereby agree as follows:

1. Leased Premises

The City leases to the Conservancy and the Conservancy leases from the City the Greystone building, including all of the improvements therein, located in Piedmont Park, Atlanta, Georgia, and hereinafter referred to as “*Premises*” or “*Leased Premises*” or “*Greystone*”.

2. Use of Premises

2.01 Permitted Uses

The Premises shall be used as a facility to be rented by private parties that will perform private events therein, including without limitation meetings, exhibitions, parties, and weddings. The Premises shall be used for no other purpose, including without limitation concessions, without prior written consent from the Commissioner of the Department of Parks, Recreation and Cultural Affairs (hereinafter referred to as “the Commissioner”). Any revenue not authorized herein received by the Conservancy or any Sublessee or other user of the Leased Premises, arising out of its use of the Leased Premises, shall inure immediately and completely to the City.

2.02 Income from Premises

The Conservancy shall have the right to retain any and all income, fees, revenues and other amounts derived from the management and operation of the Premises, from whatever source, including but not limited to services and rentals, provided that the management and operation are consistent with section 2.01 above and the other provisions of this Agreement. The Conservancy shall apply any amounts retained pursuant to this Paragraph 2.02 to (i) operating expenses incurred by the Conservancy with respect to the Leased Premises, including without limitation repair, maintenance, and improvement thereof; (ii) projects for the renovation, restoration and beautification of other segments of Piedmont Park; (iii) expenses incurred from the Conservancy’s promotion of Piedmont Park; and (iv) such other expenses as may be incurred by the Conservancy in connection with its mission to enhance and preserve Piedmont Park.

2.03 Outdoor Events at Premises

2.03.1 Where an Outdoor Event is held at Greystone, including without limitation the Greystone terrace, said event shall be exempt from the requirements of the City’s Outdoor Events Ordinance. The requirements of the Outdoor Events Ordinance will apply to any

portion of the Greystone event that extends beyond the Premises boundaries.

2.03.2 During those times that Piedmont Park is being utilized for a Class A Outdoor Festival, any event being held at Greystone must remain completely indoors, and the terrace may not be utilized. In addition, during the times that the Class A Outdoor Festival is permitted by the City to be in Piedmont Park, including without limitation during set-up and take-down, the Conservancy shall modify its use of Piedmont Park to comply with the reasonable needs of the Outdoor Festival, where such needs will be expressed to the Conservancy by the Commissioner or her/his designee.

2.04 Restrictions on Use of Premises

2.04.1 The Conservancy shall not do, or cause or permit anything to be done, in or about the Premises, or bring or keep anything thereon, which will increase in any way the rate of fire insurance; or create a nuisance; or in any way obstruct or interfere with the legal rights of others residing or operating businesses near the Premises; or allow any sale by auction at the Leased Premises; or commit or suffer to be committed any waste upon the Premises; or use or allow the Premises to be used for any improper, immoral, unlawful, or objectionable purpose; or place any loads upon the floor, walls, or ceiling of the Leased Premises which will endanger the structure; or do or permit to be done anything in any way tending to injure the reputation of the City or the appearance of the Premises or the Park.

2.04.2 The Conservancy shall not vacate nor abandon the Leased Premises at any time during the term hereof; and, if the Conservancy shall abandon, vacate, or surrender the Leased Premises or be dispossessed by operation of law or otherwise, any personal property belonging to the Conservancy and left upon the Leased Premises and any or all of the Conservancy's improvements and facilities thereon shall, at the option of the City, be deemed to be abandoned by the Conservancy and shall, at the option of the City, become the property of the City.

3. Term

The Term of this Agreement shall commence on the date that it is executed, as set forth in the first paragraph hereinabove, and shall continue for five years. Upon mutual agreement of the Parties, the Parties may renew this MOU for two additional five-year terms.

3.01 Inspection of the Premises Prior to Expiration of the Term

A representative of the Conservancy and the Commissioner or her designee shall conduct a walk-through inspection of the Premises, and sign a walk-through inspection report, prior to executing this Agreement. The report shall set forth the condition of the Leased Premises at the time of execution, and shall specifically describe any defects or deficiencies in the Premises. A walk through inspection of the Premises shall be made by the Commissioner or her/his designee and a representative of the Conservancy prior to the expiration or termination of this Agreement, for the purpose of noting deficiencies in the maintenance of the Premises. The Conservancy shall correct or repair any and all deficiencies noted during such inspection within thirty days.

3.02 Surrender of Premises

The Conservancy shall yield and deliver peaceably to the City possession of the Premises and, to the extent required hereunder, the Premises' Improvements, at the end of the Term set of this Agreement, whether such end occurs by termination, expiration, or otherwise. The Premises shall be in a condition similar to that which existed at the beginning of the Term except for reasonable wear and tear arising from use of the Premises to the extent permitted elsewhere in this Agreement. Except as may be otherwise required by this Agreement, the Conservancy shall remove its signs and trade fixtures from the Premises and shall surrender the Premises and appurtenances thereto in clean and neat condition. All keys to the Premises shall be delivered to the Commissioner by the Conservancy. The Commissioner shall reasonably determine whether the Premises is clean, neat, and in good repair as provided in this Section, and if s/he determines that it is not, the Conservancy shall remedy the situation as set forth in section 3.01 above. The Conservancy can take trade fixtures, furniture and personal property, provided that the same are removed within thirty days.

4. Rental

The Conservancy shall not owe monthly rent to the City. In exchange for a waiver of monthly rent, the Conservancy shall operate and manage the Leased Premises as set forth in this Agreement. All costs associated with managing and operating the Premises shall be the responsibility of the Conservancy, except where stated otherwise in this Agreement.

5. Utilities

The Conservancy shall maintain, repair and replace all utilities serving the Premises and pay all charges for utility services to the Premises promptly when due. The Conservancy shall also provide and pay for, at its sole expense,

appropriate internal telecommunications needed for the effective operation and management of the Premises. The Conservancy hereby expressly waives and releases the City from any and all claims for damages arising or resulting from failures or interruptions of utility services to the Premises, provided that such failures or interruptions were not occasioned by the City's fault or neglect.

6. Maintenance of Premises

6.01 The Conservancy shall be responsible for all repairs and maintenance of the Premises throughout the term of this Agreement. The Conservancy shall keep and maintain the Premises and all improvements, equipment, furnishings, fixtures, and accessories existing therein in good and sanitary order and repair and in good, safe, and presentable condition, consistent with the highest forms of business practices, all at no cost or expense to the City. If after thirty (30) days written notice from the City, the Conservancy fails to maintain or repair the Premises, or any portion thereof, then the City may, but shall not be obligated to, enter upon the Premises and perform such maintenance or repair, and the Conservancy shall pay the cost thereof to the City upon demand; provided, however, that if such repairs cannot be completed within said thirty-day period, then the Conservancy shall not be in default and the City may not exercise its option herein if the Conservancy has commenced repairs within said thirty-day period and diligently pursued the same to completion. Any unpaid amounts under this Section 6 shall bear interest at the rate of 10% per annum until paid in full.

6.02 The Conservancy shall provide and pay for, at its sole expense, security services as needed for the effective and safe operation and management of the Leased Premises. The Conservancy shall also provide all janitorial services for the Premises as necessary to sustain acceptable levels of cleanliness and sanitation.

7. Improvements

The Conservancy hereby accepts the Leased Premises in its "as-is" condition and shall construct or install all improvements or equipment in the Premises required for the uses and purposes contemplated herein without any cost or expense to the City, subject to prior written approval by the Commissioner of the plans and specifications therefor.

7.01 Contractors Hired

The Conservancy shall hire contractors who are acceptable to the City. All contractors shall be required to provide the City with certificates of general liability and other insurance coverage in such amounts as the City may reasonably require, and with endorsements described in Section 14/

Appendix B hereinbelow. The Conservancy shall obtain and pay all fees for all permits required by the City or other legal jurisdictions, as applicable, for all improvements to the Premises, and shall furnish copies of such permits to the Commissioner prior to commencement of work.

7.02 Documentation of Improvements

The Conservancy shall furnish a set of As-Built Drawings to the Commissioner for all Improvements. Further, the Conservancy shall document the costs of the Conservancy's Improvements in a form and detail satisfactory to the Commissioner and submit the same within 30 calendar days following completion of the work for review and approval, for the purpose of establishing the unamortized costs of the Leasehold Improvements to be reimbursed to the Conservancy pursuant to Section 17.2 herein.

7.03 Removal and Demolition

The Conservancy shall not remove or demolish, in whole or in part, any Improvements upon the Leased Premises without the prior written consent of the Commissioner, who may, in her/his discretion, condition such consent upon the obligation of the Conservancy to replace the same by an improvement specified in such consent, but the Commissioner shall not withhold consent unreasonably and shall not impose unreasonable conditions on the consent.

7.04 Title

Title to any and all improvements made by the Conservancy to or upon the Leased Premises shall pass to and be vested in the City upon completion of each improvement.

8. Trash and Refuse

8.01 Removal and Disposal

It is hereby expressly stipulated that the quick and efficient removal and disposal of trash, clippings, refuse, garbage, and other debris from the Leased Premises is essential, and the Conservancy shall arrange for such removal and disposal of same at its cost and at no cost or expense to the City and in accordance with applicable laws and ordinances.

8.02 Storage Containers

Trash, clippings, refuse, garbage, and other debris shall be stored in closed containers suitably screened, pending their removal and disposal, and the

Conservancy shall make certain that such storage does not generate odors, attract rodents or insects, or become offensive in any manner.

8.03 Deleterious Wastes

The Conservancy shall obey any and all applicable laws, procedures, standards, and regulations of Federal, State, County, and City authorities regarding petroleum products and other deleterious wastes, including but not limited to regulations regarding entrance of those products into the sewage and storm water drainage systems and the required treatment of those products. In the event that the Conservancy violates this provision, and/or the City is required by any Federal or State agency having jurisdiction in such matters, to pay a fine, penalty, or incur other costs, due to the failure of the Conservancy to comply with this Subsection, then in such event, the Conservancy shall reimburse the City the full amount of such fine, penalty, and/or costs promptly upon receipt of invoice therefor from the City, and in addition, the provisions set forth in the first paragraph of section 10.03 (Hazardous Substances Section) below, regarding the Conservancy's obligations to the City, shall apply. For purposes of this subsection 8.03, deleterious waste shall not include materials which are deemed hazardous materials, as set forth in section 10.03 below.

9. Encumbrances and Liens

The Conservancy shall not encumber its interest in the Leased Premises or in any improvements that it places therein by mortgage, deed or trust, or other instrument without prior written consent of the City. With the exception of said encumbrances which have been consented to by the City, the Conservancy shall keep the Leased Premises and all improvements thereon free from any and all liens arising out of any work performed, materials furnished or obligations incurred by the Conservancy, its employees, agents, sublessees, contractors and/or subcontractors. The Conservancy shall save the City harmless from any such liens (including any encumbrance which did not receive prior written consent of the City) and shall pay to the City, upon demand, the cost of discharging such liens with interest at the rate of seven (7%) percent per annum from the date of such discharge, together with reasonable attorney's fees in connection with the settlement, trial, or appeal of any such lien matter. It is understood, however, that the Conservancy may pay any such liens under protest; and without liability, cost or expense to the City, may, in good faith, contest the validity or amount thereof.

10. Compliance with Laws and Regulations

10.01 General Compliance

The Conservancy shall not omit or fail to do anything, or do or permit anything to be done on or about the Leased Premises, or bring or keep anything on the Leased Premises on in any improvement erected thereon, which will in any way conflict with any law, ordinance, rule or regulation required to be kept and observed by the Conservancy which is now in force or which may hereinafter be enacted or promulgated by any public authority having jurisdiction over the Leased Premises.

10.02 Drug-Free Workplace Policy

The Conservancy acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on City property and thus on the Premises. Violation of this provision of this Agreement may result in immediate termination of the Lease by the City.

10.03 Hazardous Materials

Except in compliance with all applicable requirements, the Conservancy shall not allow the entrance of Hazardous Materials, as defined below, from the Leased Premises into the sewage and stormwater drainage system serving the Premises and/or Piedmont Park. The Conservancy shall not cause or permit any Hazardous Materials to be placed, held, stored, processed, treated, released or disposed of on or at the Leased Premises. The Conservancy hereby indemnifies the City from and against any breach by the Conservancy of the obligations stated in the preceding sentences, and agrees to defend and hold the City harmless from and against any and all loss, damage, cost and/or expenses (including, without limitation, fines assessed against the Conservancy, the City or others for whom the City may be responsible, diminution in value of the Premises, and sums paid in settlement of claims, attorneys' fees, consultant fees, and expert fees) which arise during or after the Term as a result of such breach. This indemnification of the City by the Conservancy also includes, without limitation, costs incurred in connection with any investigation of the site conditions or any cleanup, remedial, removal, or restoration work required by any Federal, State or local governmental agency or political subdivision because of Hazardous Material present in the soil or ground water on or under the Premises or in Piedmont Park which results from such a breach. Without limiting the foregoing, if the presence of any Hazardous Material on Premises caused or permitted by the Conservancy results in any contamination of the Premises or Piedmont Park, the Conservancy shall promptly take all actions at its sole expense as are

necessary to return the Premises and Piedmont Park to the condition existing prior to the introduction of such Hazardous Material to the Premises; provided that the City's approval of such actions, and the contractors to be used by the Conservancy in connection therewith, shall first be obtained.

As used herein, the term "Hazardous Material" means any hazardous or toxic substance, material, or waste which is or becomes regulated by any governmental authority having jurisdiction over the Premises, or the United States Government. The term "Hazardous Material" includes, without limitation, any material or substance which is (a) defined as a "hazardous waste", "extremely hazardous waste", or "restricted hazardous waste" or similar term under any laws now or hereafter enacted by the United States or the State of Georgia or any political subdivision thereof, or (b) designated as a "hazardous substance" pursuant to Section 311 of the Federal Water Pollution Control Act (33 U.S.C. § 1317), or (c) defined as "hazardous waste" pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. § 6911 *et seq.* (42 U.S.C. § 903), or (d) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 *et seq.* (42 U.S.C. § 9601).

11. Non-Discrimination

The Conservancy shall not discriminate based upon race, creed, color, religion, gender, national origin, marital status, age, parental status, physical handicap, sexual orientation, or gender identity in the implementation of this Agreement, including any of the Riders hereto. In addition, by execution of this Agreement, the Conservancy certifies that, during the term of this Agreement, it shall be bound by and comply with the following statement:

"We the supplier of goods, materials, equipment and/or services covered by this Agreement shall not discriminate against any volunteer, employee, contractor, subcontractor, or applicant for any of the above, because of the race, creed, color, religion, gender, national origin, marital status, parental status, age, physical handicap, sexual orientation, or gender identity of such person or any person associated with any contractor/subcontractor."

As used here, the words 'shall not discriminate' shall mean and include without limitation the following: Recruited, whether by advertising or other means; compensated, whether in the form of rates of pay or other forms of compensation; selected for training, including apprenticeship; promoted; upgraded; demoted; downgraded; transferred; laid off; and terminated.

The Conservancy shall incorporate a copy of the nondiscrimination section 1, in each and every contract with each and every contractor and/or subcontractor of

any tier, and shall require each and every contractor and subcontractor of any tier to comply with all such requirements.

12. Transfer of Title or Rights

The Conservancy shall not sell, assign, or transfer this Agreement, or any portion thereof, without the prior written consent of the City. Section 21.2 of this Agreement, regarding unreasonable withholding of consent, shall not apply to this section 12. The City shall have the right to charge a rental rate up to fair market value at the time of any assignment or transfer. No assignee for the benefit of the Conservancy's creditors, and no trustee, receiver or referee in bankruptcy shall acquire any rights under this Agreement by virtue of this paragraph.

13. Liability, Indemnity, and Insurance

13.1 City's Liabilities

The City shall not in any way be liable or responsible for any loss or damage or expense that the Conservancy may sustain or incur in its occupancy and use of the Premises.

13.2 Indemnification and Hold Harmless

(a) Releases and Indemnification:

The Conservancy hereby releases and shall indemnify, defend, and hold harmless the City, its elected officials, officers, agents, employees, authorized representatives, successors, and assigns from and against any and all suits, actions, legal or administrative proceedings, claims, debts, demands, damages, liabilities, injuries, obligations, losses, judgments, charges, interest, attorneys' fees, costs, causes of action of every kind and character, whether in law or equity, and expenses of every kind or nature, whether arising before or after the termination of this Agreement and in any manner directly or indirectly caused, occasioned, or contributed to in whole or in part, or claimed to be caused, occasioned, or contributed to in whole or in part, by reason of any act, omission, fault or negligence whether active or passive of the Conservancy, its officers, employees, agents, subcontractors or of anyone acting under its direction or control or on its behalf in connection with or incidental to this Agreement.

(b) Negligence and Waiver

The Conservancy's aforesaid release, indemnity, and hold harmless obligations, or portions or applications thereof, shall apply even in the event of the fault or negligence, whether active or passive, or strict liability of the parties released, indemnified or held harmless to the fullest

extent permitted by law, but in no event shall they apply to the extent that the liability is caused by the willful misconduct or sole negligence of the party released, indemnified, or held harmless. The Conservancy specifically waives any immunity provided against this indemnity by an industrial insurance or workers' compensation statute. The Conservancy further agrees that this agreement to indemnify, defend, and hold harmless the parties released shall not be limited to the limits or terms of the insurance, if any, required under this Agreement.

13.3 The Conservancy shall require each contractor or subcontractor that performs any work related to the Leased Premises to comply with the indemnification provisions set forth in this section 13 and to comply with the insurance requirements set forth hereinbelow in Section 14/ Appendix B.

13.4 This Section 13 shall survive any termination or expiration of this Agreement.

14. Insurance and Bonding Requirements

The insurance and bonding requirements for this Agreement are set forth in Appendix B attached hereto and incorporated herein by reference.

15. Property Insurance; Damage or Destruction of the Premises

15.1 Repair and Rebuilding

Each of the Parties hereto shall insure its respective interest in the Premises. In this regard, the Conservancy shall comply with the provisions of Section 14/Exhibit B above. In the event of damage to or destruction of the Premises by fire or other casualty or otherwise, the Parties shall repair or rebuild the Premises to the extent of their respective interests with all reasonable diligence and dispatch so as to restore it, as nearly as possible, to the condition which existed immediately prior to the damage or destruction, subject to such modifications as may be agreed upon between the Conservancy and the City, and further subject to the provisions of Section 15.2 below.

15.2 Option of City Not to Repair or Rebuild

If the entire Premises is so substantially damaged or destroyed that the City determines that rebuilding is not prudent, it may elect within 60 days of the date of the damage or destruction not to rebuild and within such period so notify the Conservancy. In such event, the insurance proceeds paid on claims filed by City relative to losses sustained by City under

insurance policies obtained by City shall be payable to City, insurance proceeds paid on claims filed by the Conservancy relative to losses sustained by the Conservancy under insurance policies obtained by the Conservancy shall be payable to the Conservancy, and all other claims shall be paid as the interests of the Parties may appear, and this Agreement shall be terminated.

15.3 Failure of City to Repair or Rebuild

If the damage or destruction is so extensive that the Premises cannot reasonably be used by the Conservancy to conduct its business and the City fails to proceed within 60 days with repair and rebuilding as required herein and to diligently proceed thereafter to pursue such repair and rebuilding as required herein to completion, the Conservancy may terminate this Agreement for default.

16. DEFAULT BY THE CONSERVANCY

16.1 Events of Default

The Conservancy shall be in default under this Agreement if:

16.1.1 Failure to Abide by Terms of this Agreement

The Conservancy shall fail to keep, perform, or observe any material term, covenant, or condition of this Agreement to be kept, performed, or observed by the Conservancy and shall not cure such failure within thirty (30) days after receipt of written notice of such failure from the Commissioner or, if such failure cannot be cured within said thirty (30) day period, the Conservancy fails to commence such cure within that period and thereafter to diligently pursue same to completion. The thirty (30) day cure period shall not apply to violations set forth in section 10.02 above nor in sections 16.1.2 nor 16.1.3 below.

16.1.2 Abandonment of Premises or Cessation of Services

The Conservancy abandons the Premises or ceases providing its services therein for thirty (30) days or more, except when such abandonment and cessation is due to fire, earthquake, strike, governmental action, default by City, or any other cause beyond the control of the Conservancy.

16.1.3 Misrepresentation

The Conservancy intentionally and willfully misrepresents to the City any material fact regarding its ability to enter into this Agreement.

16.2 City's Remedies

If default is made by the Conservancy, as described in section 16.1 above, the City may terminate this Agreement upon written notice to the Conservancy.

16.2.1 Possession

Without any showing of need or the presence of any statutory or common law grounds, all of which requirements are hereby expressly waived by the Conservancy, upon termination of this Agreement by the City due to the Conservancy's default, the City may take possession of the Premises, exclusive of trade fixtures, inventory, and personal property, and re-let all or any portion thereof.

16.2.2 Other Remedies

The City may exercise any and all other rights or remedies available at law or in equity, including, without limitation, the right to obtain restraining orders, injunctions, and decrees of specific performance.

17. Default by the City

17.1 Events of Default

The City shall be in default under this Agreement if:

17.1.1 Premises not Available to the Conservancy

The City shall deprive the Conservancy of its right to occupy and use the Premises in accordance with the terms of this Agreement for a period in excess of five (5) calendar days.

17.1.2 Failure to Abide by Lease Terms

The City shall fail, after receipt of thirty (30) days prior written notice from the Conservancy, to keep, perform, or observe any

material term, covenant, or condition of this Agreement to be kept, performed, or observed by the City.

17.2 The Conservancy's Remedies

If default is made by the City as described in section 17.1 above, the Conservancy may terminate this Agreement upon written notice to the City. The Conservancy may charge the City for the reasonable and proper unamortized capital costs of the Leasehold Improvements as documented by the Conservancy pursuant to Section 7.02 above, and amortized based upon a straight-line depreciation schedule over the Term of this Lease, with zero salvage value.

18. City Inspection of Premises

The City shall have the right, upon prior notice to the Conservancy, and at any reasonable time, to inspect the Leased Premises for the purpose of determining whether or not the Conservancy is complying with the terms and conditions hereof or for any other purpose incidental to the rights of the City. In the event of an emergency, the City shall have the absolute right to take such action therein as may be required for the protection of persons or property. The Conservancy shall assure the City of emergency access to the Premises by providing emergency telephone numbers at which the Conservancy or its agent may be reached on a 24-hour basis. For non-emergencies, the City's employee or representative shall be escorted by an authorized employee of the Conservancy.

19. Waivers

No waiver by either of the Parties at any time of any of the terms, conditions, or covenants of this Agreement, or noncompliance therewith, shall be deemed as a waiver at any time thereafter of the same or any other term, condition, or covenant herein contained, nor of the strict and prompt performance thereof by the other. No option, right, power, remedy, or privilege of either of the Parties shall be construed as being exhausted or discharged by the exercise thereof in one or more instances. It is agreed that each and all of the rights, powers, options, or remedies given to each of the Parties by this Agreement are cumulative and no one of them shall be exclusive of the others or exclusive of any remedies provided by law except as specifically provided herein, and the exercise of one right, power, option, or remedy, by either of the Parties, shall not impair its right to any other right, power, option, or remedy, except as specifically provided herein.

20. Entire Agreement

The Parties anticipate executing a Piedmont Park Conservancy Operating Agreement during 2009 ("Operating Agreement"). The Operating Agreement

will provide general terms that apply to numerous Piedmont Park facilities operated and managed by the Conservancy, including Greystone. At the time that the Operating Agreement is executed and made effective, Greystone will be one of the Facilities that is covered and this Greystone Lease Agreement will be incorporated into the Operating Agreement by reference, but there will be no terms in the Operating Agreement that, with respect to Greystone, will be inconsistent with the terms herein. This Greystone Lease Agreement will remain in effect until it expires or until it is terminated pursuant to Section 16 or 17 above. Therefore, with the exception of the Operating Agreement at the time that it takes effect, this Agreement represents the entire and integrated Agreement between the Parties and may be amended only by written instrument signed by both Parties, and said instrument must be authorized by appropriate City legislation. This Agreement does not supersede the May 18, 2006 MOU between the Parties, and the MOU remains in full force and effect throughout the term provided therein.

21. Miscellaneous Provisions

21.1 Usufruct

The rights of the Conservancy hereunder constitute a usufruct, which is not subject to levy or sale. No estate shall pass out of City.

21.2 Consent Not to be Unreasonably Withheld

Whenever consent or approval is required hereunder by either of the Parties, such consent is not to be unreasonably withheld, or to be delayed for any unreasonable period of time.

21.3 Recording

The City and the Conservancy may record this Agreement, any memorandum or short form of this Agreement, or any affidavit with respect to this Agreement, as a public record document in the appropriate office. The recording of this Agreement does not grant an estate in the Premises.

21.4 Severability

If any clause or provision of this Agreement is declared illegal, invalid or unenforceable under present or future laws effective during the Term of this Agreement, then, in that event, it is the intention of the Parties hereto that the remainder of this Agreement shall not be affected thereby, and it is also the intention of the Parties hereto that in lieu of each clause or provision of this Agreement that is illegal, invalid, or unenforceable, there

be added as a part of this Agreement a clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible and be legal, valid, and enforceable.

21.5 Gender

Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

21.6 Exhibits and Attachments

All exhibits, attachments, riders, memoranda of understanding, and addenda referred to in this Agreement are incorporated into this Agreement and made a part hereof by reference for all intents and purposes.

21.7 No Joint Venture

The City and the Conservancy are not and shall not be deemed to be, for any purpose, partners or joint-venturers with each other.

21.8 Conservancy Employees and Volunteers

Any volunteers utilized or personnel employed by the Conservancy or working at its direction, or any personnel serving the Conservancy's operation of the Premises, shall be volunteers or employees of the Conservancy (or of the independent contractors hired by the Conservancy) and shall not be deemed volunteers or employees of the City. The Conservancy shall remain responsible for the supervision, management and control of such personnel and any payroll, taxation or other employment obligation incident to their engagement.

21.9 Time of the Essence

Time is expressed to be of the essence with regard to each provision of this Agreement.

21.10 Evidence of the Conservancy

The Conservancy shall deliver to the City such legal documentation to evidence that those signing this Agreement are authorized by the Conservancy to bind the Conservancy to the commitments made in this Agreement.

21.11 Applicability of Code Provisions

All terms of this Agreement shall be governed by and shall be subject to all the provisions of the Code of Ordinances of the City of Atlanta now existing and as may be amended from time to time, to the extent they are not in conflict or inconsistent with applicable Federal Laws or State Laws.

21.12 Successors and Assigns

Each and all of the terms, conditions, and covenants of this Agreement shall extend to and bind and inure to the benefit of the City and the Conservancy, and the legal representatives, successors, and assigns of either or both of them.

21.13 Notices

All notices required to be given to the Conservancy hereunder shall be in writing and given by certified mail, return receipt requested, postage prepaid (with a copy sent via regular mail) addressed as follows:

Piedmont Park Conservancy, Inc.
P.O. Box 7795
Atlanta, Georgia 30357-0795
Attn: President/CEO

or such other address as may be designated by the Conservancy by written notice to the City. All notices required to be given to the City hereunder shall be in writing and given by certified mail, return receipt requested, postage prepaid (with a copy sent via regular mail) addressed as follows:

ATTN: Commissioner, Department of Parks, Recreation
and Cultural Affairs
675 Ponce de Leon Avenue, NE
8th Floor
Atlanta, Georgia 30308

or such other address as may be designated by City by written notice to the Conservancy.

No notice shall be effective if purported to be transmitted by telex, fax, or other electronic delivery. All notices shall be deemed received on the date noted on the return receipt; provided, however, as to any notice for which delivery is refused, that notice shall be deemed to have been received on the third (3rd) business day after the same was deposited, postpaid, with the United States Postal Service.

21.14 Interpretation

The language of this Agreement shall be construed according to its fair meaning, and not strictly for or against either the City or the Conservancy. This Agreement shall be construed and performed according to the laws of the State of Georgia. The references to days shall mean calendar days unless otherwise stipulated.

21.15 Table of Contents and Section Headings

The table of contents and section headings contained herein are for the convenience of reference by the City and the Conservancy and are not to be used to construe the intent of this Agreement or any part hereof, nor to modify, amplify, or aid in the interpretation or construction of any of the provisions hereof.

21.16 Integrated Agreement, Modification

This Agreement contains the entire agreement of the parties with respect to the Premises and cannot be amended or modified except by written instrument, signed by the Parties. If the Parties hereto have entered previously, do now or in the future enter, into any other lease, license, permit or agreement covering other premises or facilities, this Agreement and the terms, conditions, provisions, and covenants hereof, shall apply only to the demised Premises herein particularly described, and this Agreement or any of the terms, conditions, provisions, or covenants hereof, shall not in any way or in any respect change, amend, modify, alter, enlarge, impair, or prejudice any of the rights, privileges, duties, or obligations, of either of the Parties hereto under or by reason of any other said lease, permit, license, or agreement between said Parties.

21.17 Surrender and Merger

The voluntary or other surrender or termination of this Agreement by the Conservancy, or a mutual cancellation hereof, shall not work a merger, and shall, at the option of the City, terminate all or any existing subleases or subtenancies applicable to the Premises, or may, at the option of the City, operate as an assignment to the City of all such subleases or subtenancies.

21.18 Quiet Enjoyment

The Conservancy, upon observing and keeping all of the covenants, terms, and provisions of this Agreement on the part of the Conservancy to be observed and kept, shall lawfully and quietly hold, occupy, and enjoy the use of the Premises during the term of this Agreement.

21.19 Taxes

The Conservancy shall pay or cause to be paid, prior to delinquency, any lawful taxes and any assessments levied or assessed during the term hereof (a) on the Leased Premises; (b) on all property interests hereunder or in the Leased Premises; and (c) on any improvements, fixtures, and equipment now or hereafter existing on the Leased Premises and on any personal property on, in or about any buildings or improvements therein.

21.20 Holding Over

Should the Conservancy hold over said Premises after this Agreement has terminated in any manner, during such holding over the Conservancy shall be deemed merely a tenant at sufferance, but otherwise on the same terms and conditions as herein provided.

22. City Events and City Sponsored Events

22.1 Upon written request of the Commissioner or any designee whom the Commissioner has authorized in writing to act on the Commissioner's behalf with respect to such request (each, an "Event Request"), the Conservancy will use commercially reasonable efforts to schedule any City Event (an event held by the City in its normal course of business) or any City-sponsored event (as defined in City Code of Ordinances section 142-2(h)) respectively a "City Event" or a "City Sponsored Event") in the Premises, subject to the terms and conditions of this Agreement. The City recognizes that the Conservancy has an established and active program for scheduling special events in the Premises, and that reservations for such special events are often made well in advance of the applicable event date. Therefore, the City acknowledges and agrees that the Conservancy is under no obligation to re-schedule existing reservations for any City Event or City Sponsored Event. The City shall have no right to schedule or hold any City Event or City Sponsored Event in the Premises without the Conservancy's prior approval. The prior approval shall not be unreasonably withheld or delayed, though the Parties agree that the Conservancy shall have the right to disapprove any City Event or City Sponsored Event where the Leased Premises is subject to an existing reservation, and such disapproval shall be deemed reasonable.

22.2 Should the Conservancy approve a particular City Sponsored Event, the Conservancy may in its sole discretion, after consultation with the Commissioner, waive or allow discounts off the standard rental fee. There shall be no rental fee charged for City Events. Regardless of the rental fee charged to the City, if any, the City shall reimburse the Conservancy for any and all out-of-pocket costs reasonably incurred in facilitating and

managing such City Event, and specifically cleaning fees, set-up and take-down charges, and restoration costs if any. The Conservancy may not charge the City for any other type of out-of-pocket costs unless the Commissioner approves such costs in writing prior to the subject event. The provisions of section 21.2 above shall not apply to this section 22.2.

22.2.1 All City Events and City Sponsored Events shall be subject to the Conservancy's standard rules and procedures regarding rental events on the Premises, including the payment of a security deposit and compliance with rules governing the consumption of alcoholic beverages on the Premises, except that the City need not pay a security deposit for City Events.

23. The Conservancy, its agents, subcontractors, employees, volunteers or users shall not utilize the Leased Premises, or allow the Premises to be utilized for any overnight accommodations, sleeping, or residential uses in/on the Premises.
24. The Conservancy shall include City titles and designations of the Mayor, the Atlanta City Council, and/or the Commissioner when appropriate, as determined by the Commissioner, to identify Piedmont Park and/or Greystone, and/or to reflect the ownership of Piedmont Park and/or Greystone by the City in connection with public relations notices, memoranda, and other publicity as each relates to the Premises.
25. The Conservancy shall notify the Commissioner within three hours or sooner of learning of any emergency event regarding or arising in Piedmont Park and/or the Premises that involves the media, the police or fire departments or emergency medical services.

IN WITNESS WHEREOF, the Parties hereto have caused these presents to be executed by their duly authorized officials or officers, to be attested, and their respective seals to be hereunto affixed, as of the day and year first above written.

ATTEST:

CITY OF ATLANTA

Municipal Clerk

Mayor (SEAL)

Signature Lines Continued on Next Page

ATTEST:

PIEDMONT PARK CONSERVANCY,
INC.

Corporate Secretary

President (SEAL)

RECOMMENDED:

Commissioner,
Department of Parks, Recreation,
And Cultural Affairs

APPROVED AS TO FORM:

APPROVED

Senior Assistant City Attorney

Director, Bureau of Purchasing and Real
Estate

APPENDIX B AGREEMENT INSURANCE & BONDING REQUIREMENTS

A. Preamble

The Conservancy agrees to obtain and maintain during the entire term of the Agreement the insurance set forth in this Appendix B. The following requirements apply to all work performed by the Conservancy under the terms of the Agreement. Compliance is required by the Conservancy. To the extent permitted by applicable law, the City reserves the right to adjust or waive any insurance or bonding requirements contained in this Appendix B and applicable to the Agreement; so long as such adjustments are commercially reasonable in light of the permitted uses of the demised premises, including, without limitation, construction, development, renovation, maintenance and repair work undertaken under the terms of the Agreement.

1. Evidence of Insurance Required Before Work Begins

No work under the Agreement may be commenced after the date of the Amendment to which this Appendix B is attached until all insurance and bonding requirements contained in this Appendix B, or required by applicable law, have been complied with and evidence of such compliance satisfactory to the City as to form and content has been submitted to the City. The Conservancy must provide the City with a Certificate(s) of Insurance that the City determines evidences that the Conservancy has complied with all insurance and bonding requirements set forth in this Appendix B at the time the Conservancy submits to the City the Agreement (or amendment to Agreement to which this Appendix B is attached) executed by the Conservancy. In the event that the Conservancy does not comply with such submittal requirements prior to the time the Conservancy submits to the City the Agreement (or amendment to Agreement to which this Appendix B is attached) executed by the Conservancy, such failure may delay executing the Agreement until such time as the Conservancy submits a Certificate of Insurance, and/or other documents required by the City's Office of Risk Management, complying with Section 1 of this Appendix B. The City acknowledges and agrees that it shall not act in an arbitrary or capricious manner when determining whether the Conservancy has complied with all insurance and bonding requirements contained in this Appendix B or when determining whether the Conservancy's Certificate(s) of Insurance evidence that the Conservancy has complied with the same.

2. Minimum Financial Security Requirements

All companies providing insurance required by this Appendix B must meet certain minimum financial security requirements. These requirements must conform to the ratings published by A.M. Best & Co. in the current Best's Key Rating Guide - Property-Casualty. The ratings for each company must be indicated on the Certificate of Insurance provided by the Conservancy to the City

which certifies the City determines adequately evidences that all insurance and bonding requirements set forth in this Appendix B and applicable to the Agreement have been satisfied; provided however, in no event shall the City's Office of Risk Management act in a manner which is arbitrary or capricious when determining if the Certificate of Insurance and/or the other documents, if any, evidence the Conservancy's compliance with these conditions.

Companies providing insurance or bonds to the Conservancy to meet the requirements of the Agreement must meet the following requirements:

- i) Best's Rating not less than A-,
- ii) Best's Financial Size Category not less than Class IX, and
- iii) Companies must be authorized to conduct and transact insurance contracts by the Insurance Commissioner, State of Georgia.
- iv) All bid, performance and payment bonds must be underwritten by a U.S. Treasury Circular 570 listed company.

If the issuing company does not meet these minimum requirements, or for any other reason is or becomes unsatisfactory to the City, the City will notify the Conservancy in writing. Within ten (10) business days after the Conservancy's receipt of such notice, the Conservancy must obtain a new policy or bond issued by an insurer complying with the requirements set forth above in Section 2 of this Appendix B and submit to the City evidence in the form of a Certificate of Insurance, and/or other documents required by the City's Office of Risk Management, of its compliance with these conditions; provided however, in no event shall the City's Office of Risk Management act in a manner which is arbitrary or capricious when determining if the Certificate of Insurance and/or the other documents, if any, evidence the Conservancy's compliance with these conditions.

The Conservancy's failure to comply with all insurance and bonding requirements set forth in this Appendix B and applicable to the Agreement will not relieve the Conservancy from any liability under the Agreement. The Conservancy's obligations to comply with all insurance and bonding requirements set forth in Appendix B and applicable to the Agreement will not be construed to conflict with or limit the Conservancy's indemnification obligations under the Agreement.

3. Insurance Required for Duration of Contract

All insurance and bonds required by this Appendix B must be maintained during the entire term of the Agreement, including any renewal or extension terms, or, if applicable, until all work for which such insurance was required has been completed as required by the Agreement.

4. Notices of Cancellation & Renewal

The Conservancy must, within five (5) business days of receipt, forward to the City, at the address listed below by (a) United States mail, postpaid, registered or certified mail, return receipt requested, (b) hand-delivery (c) nationally recognized overnight delivery service providing proof of delivery or (d) facsimile transmission, all notices received from all insurance carriers providing insurance coverage required under this Agreement, including this Appendix B, that concern the proposed cancellation, or termination of coverage of any insurance policies. All notices to the City under this provision shall be sent to:

City of Atlanta
68 Mitchell St. Suite 9100
Atlanta, GA 30303
Attention: Risk Management
Facsimile No. (404) 658-7450

The City may amend such notice address by sending written notice to the Conservancy at least five (5) business days prior to the effective date of such change pursuant to the requirements set forth in Section 4 of this Appendix B.

The Conservancy shall provide the City with a Certificate of Insurance evidencing the required insurance prior to date the Conservancy submits to the City the Agreement (or amendment to Agreement to which this Appendix B is attached) executed by the Conservancy, and, thereafter, the Conservancy shall provide an updated Certificate of Insurance and/or other documents required by the City's Office of Risk Management evidencing renewals or changes to required policies of insurance at least fifteen (15) calendar days prior to the expiration of the applicable insurance policy evidenced on the previously provided Certificate(s) of Insurance; provided however, in no event shall the City's Office of Risk Management act in a manner which is arbitrary or capricious when determining if the updated Certificate of Insurance and/or other documents, if any, evidence such renewals or changes to the required policies of insurance.

5. Certificate Holder

The **City of Atlanta** must be named as certificate holder for all policies required by this Schedule B. All insurance related notices to the City under the Agreement must be mailed to the attention of **Risk Management** at the address above in Section 4 of this Appendix B, as the same may be amended.

6. Additional Insured Endorsements

The City must be covered as Additional Insured under all insurance (except worker's compensation and professional liability) required by this Appendix B and such insurance must be primary with respect to the Additional Insured. Confirmation of the City's status as an Additional Insured under the

insurance policies required hereunder must appear on any Certificate of Insurance and/or other documents required by the City's Office of Risk Management provided by the Conservancy as evidence of its compliance with this Appendix B; provided however, in no event shall the City's Office of Risk Management act in a manner which is arbitrary or capricious when determining if the Certificate of Insurance and/or the other documents, if any, evidence the Conservancy's compliance with this Appendix B. **The Conservancy must also submit to the City an Additional Insured Endorsement evidencing the City's rights as an Additional Insured for each policy of insurance under which it is required to be an additional insured pursuant to this Appendix B . The City shall not have liability for any premiums charged for such coverage.**

7. Mandatory Sub-consultant Compliance

The Conservancy must require that all contractors (including without limitation consultants) and subcontractors (including without limitation subconsultants) at all tiers, performing work arising from this Agreement are sufficiently insured/bonded consistent with commercially reasonable risk management practices.

8. Excess or Umbrella Liability Insurance

The Conservancy may procure and maintain Excess or Umbrella Liability Insurance to comply with the minimum Commercial General Liability Insurance and Commercial Automobile Liability Insurance limits specified below. Such Excess or Umbrella Liability Insurance shall cover the same insurance risks covered under the primary policy(ies) required hereby.

B. Workers' Compensation and Employer's Liability Insurance

The Conservancy must procure and maintain Workers' Compensation and Employer's Liability Insurance in the following limits to cover each employee who is engaged in work arising from this Agreement:

Workers' Compensation/Employer's Liability.	Statutory
Bodily Injury by Accident/Disease	\$100,000 each accident
Bodily Injury by Accident/Disease	\$100,000 each employee
Bodily Injury by Accident/Disease	\$500,000 policy limit

Pursuant to Georgia state law, any employer employing three (3) or more employees must provide worker's compensation coverage. If The Conservancy or its Contractors or Subcontractors do not employ at least three (3) employees, a statement on the applicable agency/company letterhead must be submitted to the City indicating such.

C. Commercial General Liability Insurance

The Conservancy must procure and maintain Commercial General Liability Insurance in an amount not less than **\$1,000,000 per occurrence subject to a \$2,000,000 aggregate policy limit**. The following indicated extensions of coverage must be provided:

- ☒ Contractual Liability
- ☒ Broad Form Property Damage
- ☒ Personal Injury
- ☒ Advertising Injury
- ☒ Fire Legal Liability
- ☒ Medical Expense
- ☒ Premises Operations
- ☒ Independent Contractors/Subcontractors
- ☒ Products – Completed Operations
- ☒ Additional Insured Endorsement* (written on a primary, non-contributing basis)

D. Commercial Automobile Liability Insurance

The Conservancy must procure and maintain Automobile Liability Insurance in an amount not less than **\$500,000 bodily injury and property damage combined single limit**. The following indicated extensions of coverage must be provided:

- ☒ Owned, Non-owned & Hired Vehicles
- ☒ Additional Insured Endorsement* (primary, non-contributing basis)

If the Conservancy does not own any automobiles in the corporate name, non-owned vehicle coverage will apply and must be endorsed on either the Conservancy's personal automobile policy or the Commercial General Liability coverage required under this Appendix B.

E. Property Insurance

The Conservancy shall procure and maintain Property Insurance covering all forms of risk on any and all interests related to this Agreement, including inventory, supplies, and other property of the Conservancy located in/on the Premises, insuring against the perils of fire, lightning, extended coverage, and the perils of vandalism, malicious mischief, glass breakage and sprinkler leakage, in an amount equal to the **full replacement value** of any and all interests of the Conservancy and property of the City in the care, custody and control of the Conservancy located in/on the Premises.

F. Builder's Risk Insurance

The Conservancy shall cause any contractors and/or subcontractors performing work in/on the Premises to procure and maintain Builder's Risk Insurance which provides "All-Risk" coverage on the buildings, structure or work and property of the City in the care, custody and control of the Conservancy. The amount of such insurance shall at all times be equal to **100 percent of the replacement value**.